
Meeting name	BSC Panel
Date of meeting	18 October 2001
Paper Title	P28: REVIEW OF GOVERNANCE AND MODIFICATION PROCEDURES – INTERIM PAPER
Purpose of Paper	For Decision
Synopsis	<p>This paper presents the findings of the GMG, in the form of a series of refinements to the proposal P28 and a series of potential elements that could form the basis of an alternative proposal. The Panel is invited to consider these findings and to consider the views of the Authority. In the light of these considerations, the Panel is invited to direct the GMG as to whether an alternative proposal should be developed.</p>

1. INTRODUCTION

- 1.1 Modification proposal P28 represents an amalgamation of three proposals (P21, P23 and P24), all of which sought to initiate a review of the arrangements for the progression of modification proposals. Following the development of a consolidated proposal, the Governance Modification Group (GMG) undertook a consultation exercise and have considered the responses to this consultation, along with a commentary provided by ELEXON. This paper presents the findings of the GMG, in the form of a series of refinements to the proposal and series of potential elements that could form the basis of an alternative proposal. The Panel is invited to consider these findings and to consider the views of the Authority (who provided some contribution to the GMG discussions and will be providing views under the auspices of clause 2.6.10 of section F of the BSC, following a request for such views from the Panel). In the light of these considerations, the Panel is invited to instruct the GMG as to whether an alternative proposal should be developed.

2. BACKGROUND

- 2.1 .In its initial consideration of proposals P21, P23 and P24, the Panel determined that they should be amalgamated, since they all related to improving areas of perceived concern with the Modification Procedures and/or the Panel and Panel Committees under the BSC. The Panel also agreed that a Definition Procedure should be followed, in order to establish a specific Modification Proposal for further consideration. The Definition Procedure was completed by the Governance Modification Group (GMG) and a Definition Report was presented to the Panel at its meeting on 23 August 2001.
- 2.2 The original Modification Proposals, along with representations made by interested parties, suggested a number of potential changes in the areas of the operation of the Panel, Panel Committees, Modification Groups and the Modification procedures. It should also be noted that some representations suggested that it was either premature, or not appropriate to change the modification arrangements under the BSC at this stage.
- 2.3 The GMG took due account of all representations, along with the original proposals and set down a number of options that might be considered. Furthermore, recognising that a single proposal,

or an alternative, must ultimately be determined upon, a consolidated proposal was also established. These potential changes and the consolidated proposal are all detailed within the Definition Report, previously submitted to the Panel. The consolidated proposal may be summarised as follows:

a) Panel;

- i) All non-confidential Panel business to be held in open session
- ii) Any Panel Member to be able to invite comment from the floor

b) Panel Committees;

- i) ISG and SVG to operate in the same way to the Panel.

c) Modification Groups;

- i) Standing Groups to deal with Modifications in general areas
- ii) Standing Groups to consider issues in advance of specific Modification Proposals being raised
- iii) No core membership, self –selection, no impartiality and no indemnity for Standing and Modification Groups
- iv) ELEXON to be responsible to the Panel for delivery of reports etc.

d) Modification Procedures;

- i) Evaluation procedure to replace Definition and Assessment
- ii) Only one mandatory consultation
- iii) Panel recommendation to be made after consultation
- iv) Content of report to the Authority is unchanged
- v) Urgent Modification arrangements unchanged

2.4 At its meeting on 23 August 2001, the Panel recommended that an Assessment Procedure should be undertaken by the GMG. The Panel also recommended that, as part of that Assessment procedure, the following specific activities should be pursued:

- A consultation should take place with interested parties.
- An interim report should be submitted to the Panel setting out the GMG's provisional findings.
- A commentary on the proposals from the Authority (in accordance with clause 2.6.10 of section F of the Code), the Panel and ELEXON should be obtained.

- Consideration of the development of an Alternative Modification should be undertaken, in light of the above.
- 2.5 A Consultation Document was issued on 12/09/01 which sought to fulfil the first of the above activities. The representations subsequently received were considered by the GMG at its meeting on 03/10/01, together with a commentary provided by ELEXON. On the basis of these representations, the GMG produced this report in order that it may be considered by the Panel at its meeting on 18/10/01. In the light of the representations and commentary provided, along with an assessment of the consolidated proposal, possible variations and refinements have been identified which are described in Section 4 of this report. The commentary from the Authority will be presented to the Panel meeting alongside this report.
- 2.6 Following discussion at the Panel meeting (which will be taken as forming the Panel commentary on the proposals), a full Assessment Report will be produced. This Assessment Report will include any alternative that might arise from the Panel's consideration of the potential variations put forward by the GMG, along with appropriate legal drafting and impact analyses. The Assessment Report will be considered by the Panel at its meeting on 15/11/01.

3. APPLICABLE BSC OBJECTIVES

- 3.1 In the Definition Report, it is suggested that Modification Proposal P28 may better achieve NGC Licence Condition 7A.3 (d);
- 3.2 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'
- 3.3 It is further suggested that, to a lesser extent, the proposal may better achieve NGC Licence Condition 7A.3 (c);
- 3.4 'Promoting effective competition in the generation and supply of electricity and (so far as is consistent therewith) promoting such competition in the sale and purchase of electricity'
- 3.5 It should also be noted that any proposal to modify elements of the Modification Procedures themselves must fulfil the underlying requirements in Transmission Licence Condition 7A.4 which also sets down certain requirements for modification of the BSC in general. Unlike proposed modifications to the rest of the Code, therefore, the Applicable BSC Objectives in relation to the proposed amendment of the modification procedures are the requirements of LC7A.4 (to the extent that they do not conflict with LC7A.3), along with the requirements of LC7A.3

4. FURTHER MODIFICATION GROUP DELIBERATIONS

- 4.1 The GMG assessed the responses to consultation, both in terms of the general views expressed and in respect of the detailed points that emerged. The questions put to consultation are given in Annex 1 and the responses to those questions are summarised in Annex 2. The GMG also took account of the ELEXON commentary on the proposal which is attached as Annex 3 and considered views provided by the the Authority representative, in advance of an Ofgem commentary being provided, and these views are reflected below.

a) General

4.2 In the first instance, the GMG judged that the argument against the proposal in its entirety (such that any change would be premature at this time) was outweighed by the arguments in support of there being some change. These supporting arguments suggested that efficiency would be enhanced through the adoption of the Modification. However, the GMG noted the range of views amongst respondents who supported certain elements of the consolidated proposal and consideration was given to those areas where such partial support suggested some variation or enhancement to that proposal. These particular considerations fell into two distinct categories: those that addressed the specified elements of the proposal and those that suggested other changes not explicitly described by the consolidated proposal. For each of these suggestions, in the light of the relevant supporting arguments (and counter-arguments, where applicable), the GMG decided one of the following courses of action:

- Include the suggestion as a refinement to the consolidated proposal
- Put the suggestion forward as a potential variant to the consolidated proposal which, taken together, could form an alternative proposal
- Reject the suggestion

b) Variations On The Proposal

Openness

- **Leaving the ability to invite comment from the floor of the Panel (and of the non-confidential Committees) to the Chairman.**
- 4.3 In considering this proposition, the GMG acknowledged the argument that there was a risk that the opportunity to extend comment from the floor during Panel and Committee meetings might unduly prolong such meetings. Furthermore, the Authority representative suggested that consultation was the means by which competition could be facilitated (in terms of expediting Modification proposals). The ELEXON view that any such contributions at Panel and Committee meetings should be limited to process issues (given the desire to avoid diminishing the pre-eminence of consultation) was also acknowledged. On the basis of these arguments, the GMG accepted that leaving the discretion to invite comment from the floor of Panel and Committee meetings with the Chairman might be further considered as a possible element of an alternative proposal. The GMG were similarly disposed with regard to the possibility of extending discretion to invite comment from the floor, to Panel or Committee members, but limiting comment to matters of process.

Standing Groups

- **Constitute the ISG and SVG to act as Standing Groups**
- 4.4 The GMG were of the view that the members of the ISG and SVG might well be appropriate individuals to attend Standing Group discussions. However, there were no arguments as to why it

would be beneficial to conflate the roles of Groups and Committees. Given that the Definition Report had presented arguments as to the necessity of maintaining a distinction between Groups and Committees, the GMG were minded to reject this proposition.

- **No discussion of issues at Standing Groups**

- 4.5 This view contended that consideration of broad market issues was a regulatory matter and that deliberations under the Code should confine themselves to specific Modification proposals. The GMG note that if an interested party considered that an issue required discussion, under the current drafting of the Code they would simply raise a Modification proposal to initiate such discussions. On this basis the GMG did not feel that the argument presented merited the option being considered further. However, the GMG did acknowledge the ELEXON view that, in the interests of efficiency, there may be merit in imposing suitable control over Standing Groups. The GMG therefore considered that a potential variant to the consolidated proposal could be for the Panel to establish strict terms of reference for Standing Groups and for those Groups to refer any items raised that might be outside those terms of reference back to the Panel.

- **Retain core membership of Standing and Modification Groups, along with associated elements such as impartiality, Panel selection, indemnity and reimbursement of expenses**

- 4.6 A number of respondents were of the view that removing core membership and impartiality (more particularly) could prejudice the interests of those who might not be able to attend meetings. Such an arrangement, it was suggested, could leave major players with an opportunity to shape the market. Those in favour suggested that this element of the proposal would streamline processes and improve efficiency. Some GMG members considered that the arguments of those against this element of the proposal were somewhat undermined because the current process did not function adequately. However, there were counter-views that the function of a Modification Group was such that impartiality and, to a lesser extent, continuity of attendance were important. If these aspects of Modification Groups were removed, the pre-eminence of consultation could be undermined. It was noted that ELEXON had commented that consultation should remain paramount. Furthermore, the the Authority representative stated that the Authority were supportive of the principle of impartiality. In the light of the arguments for and against this element of the proposal, the GMG accepted that this variant might form an element of an alternative proposal.

- **Standing and Modification Groups to self-select but retain impartiality and indemnity**

- 4.7 In the light of the above discussion, in particular the strength of opposition to removing impartiality specifically, the GMG considered that this variant might also be a candidate for inclusion in an alternative proposal.

Modification Procedures

- **ELEXON to not take responsibility for delivering reports to the Panel**

- 4.8 The GMG noted that this element of the proposal was, in any event, contingent on whether, or not, the Standing and Modification Groups involved self-selection. Hence, this variant of ELEXON

not being responsible for delivering reports would naturally sit with Standing and Modification Groups being selected by the Panel. Conversely, if self-selection were to be introduced, then it would be necessary for ELEXON to adopt this responsibility.

- **Retain existing consultation obligations.**

- 4.9 One respondent was of the view that existing Code drafting allowed for there only to be one mandatory consultation and hence, no change was necessary. However, the GMG confirmed that, with the exception of those proposals that were submitted directly to the Report phase, two consultations were currently mandated. A further point made was that the limitation of one mandated consultation following the substantive evaluation of a proposal might lead to wasted effort since consultation could suggest rejection or significant revision to such proposals. However, some GMG members were of the view that, given that the Authority was not bound to accept Modification proposals, this was a risk regardless of any change to consultation obligations. The Authority representative expressed concern that the level of consultation should not diminish from that currently allowed for. GMG members suggested that the opportunity to provide written comments, at any stage, on a proposal, combined with the flexibility for the Panel to direct additional consultations would ensure that the level of consultation would not reduce under the proposal, but would be more flexible and more efficiently timetabled. The GMG concluded that the arguments behind this variant were not sufficiently compelling for it to be considered as a potential element of an alternative. Therefore, the GMG rejected this proposition. Notwithstanding these considerations, there were views that enhanced reporting from Modification Groups and Standing Groups should be considered. In particular, it was suggested that minutes of such meetings should be produced. It was accepted that this suggestion should form a prospective element of an alternative proposal.

c) **Other Changes**

The following table sets out the consideration and conclusions of the GMG in respect of the various additional points raised by respondents to the consultation:

Suggested Change	GMG Consideration	GMG Conclusion
Plans to be produced to prescribe review of BSC in respect of issues	Not efficient since issues arise in a non-prescribed pattern. Also, general review of BSC is already catered for.	Reject
Re-consultation to be mandated if material changes arise after original consultations	Appears reasonable. Legal drafting should describe what sort of circumstances could arise	Include as a refinement to consolidated proposal
Authority obligation to attend Groups	Ofgem are not parties to the Code	Reject
Authority to provide views/rulings on elements of proposals	It was clarified that this proposal was contingent on the Authority having the ability to 'cherry-pick' elements of a proposal. No responses to consultation had suggested this	Reject
Unify Modification and Change Control processes	Outside scope of proposal	Reject
Adopt minimum notice for issue of papers	Outside scope of proposal	Reject
Parties to be able to request	Although Panel acts as a check	Consider as a candidate

urgent treatment of proposals from Authority	against overuse of the urgent process, the Authority has the overall market perspective	for an alternative
Panel to be able to bring forward implementation dates	So long as impacts were properly considered, appeared to be sensible	Include as a refinement in the consolidated proposal
Ability for alternatives to be separately progressed	It was difficult to understand how a true alternative could be separated from an original proposal. It was also noted that consideration of issues in Standing Groups would allow different elements to be considered more flexibly	Reject
Panel members to sponsor Groups	Already allowed for	Reject
Panel members to be invited to all Groups	Already allowed for	Reject
Panel members to chair Groups	Already allowed for	Reject
Proposer to have right of attendance and to speak at relevant Panel meeting	This proposal could form a further variant on limited abilities to speak at Panel meetings. It was further noted that all proposers should be treated in the same way	Consider as a candidate for inclusion in an alternative proposal
Ability to progress more than one alternative	Since alternative proposals should better achieve BSC Objectives, relative to an original, it was unclear how there could be more than one	Reject
Payment of expenses for self-selecting Group members	Appeared to be inappropriate	Reject

5. THE PANEL IS INVITED TO:

- ❑ NOTE; the consultation responses, the ELEXON commentary and the views of the Authority
- ❑ NOTE; the following refinements to the consolidated proposal.
 - Re-consultation to be mandated if material changes arise after original consultations
 - Panel to be able to bring forward implementation dates
- ❑ CONSIDER; in the light of the above and the GMG consideration thereof, whether any of the following should be incorporated into an alternative proposal.
 - Panel/Committee chairman's discretion to invite comment from the floor
 - Panel/Committee members' discretion to invite comment from the floor on procedural matters only
 - Proposer of a Modification to have the right to attend and speak at any relevant Panel meeting (complements the above variants)
 - ISG/SVG as Standing Groups

- No discussion of issues allowed at Standing/Modification Groups
 - Strictly controlled Terms of Reference for Standing Groups
 - Core membership and impartiality retained for Standing/Modification Groups
 - Impartiality retained for Standing/Modification Groups
 - Standing/Modification Groups to retain responsibility for delivery of reports (even though self-selecting)
 - Two mandated consultations
 - Minutes to be produced for Standing/Modification Group meetings
 - Parties (and other relevant interested parties) to request urgency directly
 - Other elements, as a result of Panel considerations
- ❑ INSTRUCT; the GMG to produce legal drafting for both the proposal and an alternative.

Neil Cohen

List of enclosures

Annex 1: Consultation Pro-forma

Annex 2: Summary of Representations

Annex 3: ELEXON Commentary